

Opinion No. 57-251

October 4, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
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TO: H. K. Shadel, Chief, Real Estate Division, Corps of Engineers, U.S. Army, P. O.
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QUESTION

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May the Corps of Engineers, U.S. Army, go upon State owned or private land and make core drilling and surface cut explorations to determine the feasibility of certain civil flood control projects in the State of New Mexico?

CONCLUSION

Yes, subject to the several restrictions and conditions listed in this opinion.

OPINION

ANALYSIS

This opinion is requested by the Corps of Engineers, U.S. Army, in conjunction with the New Mexico Commissioner of Public Lands. It is our understanding that the Corps of Engineers contemplates construction of certain civil flood control projects in this State. Prior to determining whether or not such a project is feasible, it is necessary that the sub-surface strata of the land within the boundaries of the proposed project be explored in order to determine whether or not the dam site and area to be covered "will hold water". The exploration necessary will entail the taking of a core of earth from three to six inches in diameter to an over-all depth of approximately 150 feet, and also the digging of open cuts into the earth. After the necessary exploration has been accomplished, we are reassured that the holes made will be filled and compacted and the surface of the land left in its original state as nearly as possible.

Our statutes indicate that we have one section dealing with the right of engineers and surveyors of the United States to enter upon public or private land for the purpose of making surveys, inspections, examinations and maps. The section is 67-21-27, N.M.S.A., 1953 Compilation, and reads as follows:

"The engineers and surveyors of the United States and of the state of New Mexico and registered professional engineers and land surveyors of the state of New Mexico shall have the right to enter upon the lands and waters of the state and of private persons

and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property, or for injuries resulting from negligence or malice cause on account of such entry so made."

The question which arises is whether the words "surveys, inspections and examinations" would authorize an underground survey as contemplated above. The above terms, we have found, are subject to a wide interpretation and encompass a large scope of meaning and practical application. The section found under engineering and land surveying is in no way limited by its particular statutory article and hence we feel that a liberal interpretation may be given. We have found only one case, *Howes Cave Lime and Cement Co. v. Howes Cave Association*, 34 N.Y.S. 848, where the definition of the word "survey" was extended to include an underground survey, but we have also found no cases in point requiring a restricted definition of the word "survey".

In accordance with the above, we hold that the Corps of Engineers, pursuant to § 67-21-27, supra, may enter upon public and private lands for the purpose of making the above examinations.

We think it necessary to point out, however, that § 67-21-27 provides that persons making such surveys as discussed in this opinion are subject to the responsibility of paying for actual damages to crops and other property or for injuries resulting from negligence or malice caused by the entry. We believe that should the Corps of Army Engineers undertake the proposed survey, the necessary provision for reimbursement should be provided for. We also wish to point out that this opinion is limited expressly to the survey as defined above and should any minerals or ores be discovered during the survey, such information should be kept in strictest confidence. Should the surface of the land be altered by the examination or exploration, it should, of course, be restored to its original character as nearly as possible at the conclusion of the project.